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ProSelect Insurance Company
Connecticut House Bill 5537 – An Act Concerning Certificates of Merit
April 14, 2010

This statement regarding House Bill 5537 is submitted by ProSelect Insurance Company ("ProSelect"), a subsidiary company of Medical Professional Mutual Insurance Company ("ProMutual"). ProSelect began writing medical professional liability insurance in Connecticut in 1997, and as of December 31, 2009 provides coverage to over 3000 physicians, certified nurse midwives and other health care providers as well as 22 facilities in the state. For 2009, ProSelect had approximately \$52.2 million in direct written premium in Connecticut. ProMutual Group, of which ProSelect is a member company, holds an A-(Excellent) rating from A.M.Best, and is directed by a Board comprised of a majority of physicians.

We appreciate the opportunity to present the following concerns regarding House Bill 5537. We oppose the bill as it substantially undermines the 2005 amendment to the Certificate of Merit enacted by this very body in Public Act 05-275.

Background

House Bill 5537 seeks to amend Connecticut's Good Faith Statute, General Statutes section 52-190a, to eliminate essential Certificate of Merit requirements enacted by Public Act 05-275 ("An Act Concerning Medical Malpractice") in 2005. The 2005 amendment gave much-needed teeth to the statute by requiring that every medical professional liability complaint must be accompanied by a written opinion of a similar health care provider setting forth a detailed basis for the belief that medical malpractice has occurred, and mandating dismissal if a plaintiff fails to provide the required written opinion prior to filing suit.

The current statute has been effective in reducing the filing of non-meritorious claims before they can result in years of costly and emotionally draining litigation and has been upheld by the state's Appellate Court and Supreme Court. House Bill 5537 will reverse these positive changes.

Specific Concerns with House Bill 5537

- Section 52-190a (2) currently provides that no civil action or complaint may be filed unless the claimant or claimant's attorney has obtained a written and signed opinion of a similar health care provider which "includes a detailed basis for the formation of such opinion." House Bill 5537 removes the requirement and provides instead that such opinion "states one or more specific breaches of the prevailing professional standard." Thus, under House Bill 5537, all a complainant need do is provide a list of unsupported counts, rather than provide an explanation for the allegation of medical malpractice.
- Under Section 52-190a(2)(c) as currently written, a complainant's failure to obtain and file the written opinion of a similar health care provider **shall** constitute grounds for dismissal of the action. House Bill 5537 changes the mandatory term "shall" to "may," and further provides that no action will be dismissed for such failure unless the plaintiff

fails to remedy the failure "after being ordered to do so by the court." Thus, in addition to prolonging the process, under this change the current lynchpin requirement becomes essentially discretionary at every meaningful level, effectively removing the law's teeth.

- Under current law, expert opinions must be provided by "similar health care providers." House Bill 5537 creates a new definition of "similar health care provider" by amending section 52-184(d)'s definition as follows: "In addition to a similar health care provider described in subsection (b) or (c) of this section, a "similar health care provider" is one who, to the satisfaction of the court, possesses sufficient training, experience and knowledge in a related field of medicine, so as to be able to provide expert testimony as to the prevailing professional standard of care in a given field of medicine." We agree with current law that a complaint involving medical treatment rendered in, for example, an obstetric case should require the expert opinion of a physician trained and licensed to practice in that particular field. By this amendment, the bill fatally lowers the definitional standard so as to be practically meaningless.

In conclusion, the changes to the Good Faith Statute sought by House Bill 5537 will render the Certificate of Merit requirements ineffective for all practical purposes, and will only undo the benefits of the 2005 legislation. As such the bill represents a substantive disservice to the citizens of Connecticut and accordingly, we respectfully urge lawmakers to either ameliorate or reject the legislation.

Thank you for your consideration of our comments. As always, ProSelect is available to work with you and is ready to provide any additional information as you deliberate on this matter.